



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 42 OF 2019 (OS)

VERONICA NYEGERA

(Suing as the legal representative

and administratrix of the estate of

GERISHON GATOBU MBUI).....PLAINTIFF

VERSUS

PRICILLA NDUBI

(Sued as the legal administrator of the

Estate of JULIUS NDUBI JAVAN).....DEFENDANT

RULING

1. This ruling is on a Notice of Motion dated 9th November 2019 filed by the Plaintiff pursuant to Order 51 rule 1 of the Civil Procedure Rules, Section 1A, 1B, 3, 3A, 8, 63 (e) of the Civil Procedure Act. The applicant seeks orders that the honorable Court be pleased to issue orders for stay of proceedings in Meru CMCC ELC NO 189 OF 2018 and ELC 172 OF 2018 pending the hearing and determination of this application and the suit as well as the costs of the application.

2. The application is based on the grounds on its face as well as the supporting and supplementary affidavit sworn by the plaintiff who avers, that she filed this suit against the defendant which suit is pending for hearing and determination on its merits. The suit property is LR. NO. NYAKI/MULATHANKARI/2244 and she is in occupation of the land. That the defendant filed 2 other suits over the same land and since the subject matter in the other 2 suits and in this suit is the same, it is only fair, just and tenable that the other 2 suits be stayed pending the hearing and determination of this suit. No prejudice will be occasioned to the defendant if the orders sought are granted as she is not in occupation of the suit land.

3. Further, vide the judgment in High Court Succession Cause No. 720 of 2013 it was ordered inter alia that the dispute be determined under order 37 of the Civil Procedure Rules hence her suit is properly and procedurally before this court.

4. The plaintiff submitted that one of the underlying principles of natural justice is that no man should be vexed twice over the same cause and it is clear that the same parties and the same subject matter are the same in the various suits and different courts. Also the orders sought are all directly or substantially related to the subject matter. In the interest of justice multiplicity of suits is to be avoided at all costs as it clogs the wheels of justice, holding up valuable resources. She relied on the case of **Republic V Registrar of Societies, Kenya & 2 others Ex-parte Moses Kirima & 2 others [2017]eKLR.**

5. The application is opposed by the defendant vide a replying affidavit dated 20/01/2020 sworn by the defendant, who avers that plaintiffs application is a delaying tactic and an afterthought. That she sued the plaintiff in civil suit 172 OF 2018 but the same does not exist as it changed to ELC 189 OF 2018 and the plaintiff filed a response thereto on 13/07/2018. Further, the plaintiff has not demonstrated why she filed this suit while the lower court suit still exists. She avers that she will be prejudiced if orders sought are granted as she will be constrained to litigate back and forth over the same subject matter. The plaintiff is on a fishing expedition meant to confuse the justice system and this honorable court ought to dismiss the application with costs.

6. The defendant submitted that there only exists one suit ELC 189 OF 2018 and the plaintiff never sought to have it stayed but instead filed a fresh suit. In support of his case, defendant relied on the case of **Julius Kathurima M'Igweta vs. Charles Gikundi HCC No. 59 of 2019.**

7. I have read and carefully considered the pleadings and submissions made herein. Further, this court has keenly perused the ruling

delivered in the Meru succession cause no.720 of 2013 on 12.1.2018 which appears to have been the trigger of all these other suits. It is not quite clear as to how the two suits came to be in the Chief magistrate's court even though the respondent is only admitting to the existence of case no 189 of 2018. Annexure "VN1" is a copy of a plaint indicating that there is a case no 172 of 2018 before the magistrate's court.

8. Bearing in mind that this court exercises supervisory jurisdiction over the magistrates' court in line with the provisions of section 18 of the Civil Procedure Act, and in order to ensure that there are no conflicting and multiple cases running in different courts, and taking into account the import of the decision in the succession cause in the High court, I proceed to give the following orders.

The pending suits before the magistrates court at Meru be it no.189 of 2018 or 172 of 2018 or both, are hereby transferred to the ELC Court to be handled simultaneous with the current suit. No orders as to costs.

DATED, SIGNED AND DELIVERED VIA EMAIL AT MERU THIS 22ND DAY OF SEPTEMBER, 2021

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Ruling was given to the advocates for the parties through a notice issued on 3.9.2021. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE

RULING DELIVERED ELECTRONICALLY THIS 22ND DAY OF SEPTEMBER 2021